

**REMARKS**

Upon entry of the instant Amendment, claims 1-18, 27 and 28 will be pending in the application. Claims 9-12 and 17 have been withdrawn by the Examiner on the basis of an election of species requirement. By this amendment, claims 1-14, 18 and 27 will have been amended and claim 28 will have been added. Support for new claim 28 can be found in, e.g., Fig. 8. No new matter is added. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

***Allowable Subject Matter***

Applicants note that the Examiner did not indicate that claims 2-8, 13-16, 18 and 27 contain allowable subject matter and would be allowable if the Section 112, 2<sup>nd</sup> paragraph, is withdrawn. However, because these claims were not rejected over prior art and are believed to fully comply with Section 112, 2<sup>nd</sup> paragraph, Applicants respectfully request that the Examiner indicate that at least claims 2-8, 13-16, 18 and 27 contain allowable subject matter.

***Section 112, 2<sup>nd</sup> Paragraph, Rejection***

Claims 1-8, 13-16, 18 and 27 were rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, as being indefinite. Applicants respectfully disagree with each of the Examiner's assertions.

The Examiner generally objects to claims because they allegedly recite method steps. Applicants disagree. Applicants' use of verbs reciting how the various features are arranged does not *per se* transform structural features into method steps. On the other hand, in an effort to advance prosecution and address the Examiner's concerns, Applicants have amended the claims to replace the apparently objectionable verbs.

With regard to the Examiner's assertion that the claims are not fully understood, Applicants note that Figs. 2 and 8 clearly show each of the recited features. For example, claim 1 finds support in the drawings as follows an active region including a collector region (220), an oxide layer (210) arranged on one side of the collector region (220) and having a conductive pathway (300) in electrical contact with the collector region (220), a collector metal contact (310) arranged over the oxide layer and the conductive pathway, an emitter region (240) arranged on another side of the collector region, wherein the conductive pathway (300) through the oxide layer provides electrical contact between the collector metal contact and the collector region. Claim 2 finds support in the drawings as follows: wherein a base region (230/225) is arranged on a surface of the emitter region (240), and the collector region (220) is arranged on a surface of the base region (230/225). Claim 13 finds similar support in Figs. 2 and 8. For example, claim 13 finds support in the drawings as follows an emitter region (240), a base region (225) laying on a surface of the emitter region (240), a passivation layer (272) disposed about the emitter region (240) and about an edge of the base region (225), a collector region (220) laying on the base region (225) and electrically isolated

from a substrate (205), and an oxide layer (215) disposed about at least one side and on a surface of the collector region (220).

With regard to claim 27, Applicants have amended this claim in a manner which renders this basis of rejection moot.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the objection to these claims.

### **35 U.S.C. § 102 Rejection**

Claim 1 was rejected under 35 U.S.C. § 102(b) for being allegedly anticipated by U.S. Patent No. 3,676,714 to WENSINK et al. This rejection is respectfully traversed.

The Examiner asserts that WENSINK discloses each of the features recited in claim 1. Applicants disagree and respectfully submit that a *prima facie* case of anticipation has not been established as the applied references fail to teach each and every element of claim 1 as amended.

While the Examiner has identified reference number 6 as the recited collector, reference number 14 as the conductive pathway, reference number 3 as the recited oxide layer, and reference number 11 as the recited collector metal contact, it is not apparent that the device of WENSINK discloses an emitter region, much less, one that is arranged on another side of the collector region and in the active region.

Accordingly, Applicants submit that no proper reading of WENSINK discloses, or even suggests, the combination of features recited in at least claim 1.

Accordingly, Applicants respectfully submit that the above-noted rejection under 35 U.S.C. § 103(a) should be withdrawn.

***Request for Rejoinder of Non-Elected Claims***

Applicants further submit that rejoinder of withdrawn claims is now proper, because the withdrawn claims depend from claims 1 and 13 which are believed to be allowable. Applicants refer the Examiner to MPEP 821.04 which indicates that withdrawn claims which depend from or otherwise include all the limitations of the allowable claims will be rejoined if presented prior to allowance and issuance of a final rejection. Accordingly, Applicants request that the Examiner rejoin these claims which were allegedly directed to the non-elected invention and consider the merits of the same.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed.

Any fees required for consideration of the instant response are hereby authorized to be charged to our Deposit Account No. 09-0458.

Respectfully submitted,  
David C. AHLGREN et al.

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', with a stylized, overlapping loop at the end.

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July 5, 2006  
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